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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/202,305	03/22/1999	NICHOLAS MANOLIOS	06025.0003	2721

7590 04/25/2002

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EXAMINER

GUPTA, ANISH

ART UNIT

PAPER NUMBER

1653

DATE MAILED: 04/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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EXAMINER
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21

Below is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

DATE MAILED:

ADVISORY ACTION

■ THE PERIOD FOR RESPONSE

- a) ■ is extended to run 5 months or continues to run \_\_\_\_ from the date of the final rejection.
- b) □ expires three months from the date of the final rejection or as to the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response as set forth in b) above.

□ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

■ Applicant's response to the final rejection, filed 4-5-02, has been considered with the following effect, but is not deemed to place the case in condition for allowance.

1. ■ The proposed amendments to the claim/and or specification will not be entered and the final rejection stands because:

- a. ■ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b. ■ They raise new issues that would require further consideration and/or search. (See note).
- c. □ They raise the issue of new matter (See note).
- d. □ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e. □ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: The claims have been amended to limit the amino acids sequence of X to between two and six amino acids. First this would require, at the very least new grounds for rejection to address the limitation. Moreover, an election of species was made in the office action dated 3-15-00 wherein Applicants elected the species SEQ. ID. NO. 7. An office action on the merits was conducted on this species and other species disclosed and was extended to the Markush type claim. A species was found that anticipated the Markush type claim. Applicants amended the claims around this elected species and the search for the markush was extended to the next species. An office action on the merits was made on this next species and sent to Applicants 11-05-01. The MPEP states "[s]hould applicant, in response to this rejection of the Markush - type claim, overcome the rejection, as by amending the Markush - type claim to exclude the species anticipated or rendered obvious by the prior art, the amended Markush - type claim will be reexamined. The

prior art search will be extended to the extent necessary to determine patentability of the Markush - type claim. In the event prior art is found during the reexamination that anticipates or renders obvious the amended Markush - type claim, the claim will be rejected and the action made final. Amendments submitted after the final rejection further restricting the scope of the claim may be denied entry final."

2. ☐ Newly proposed or amended claims \_\_\_\_ would be allowed if submitted in a separately filed amendment canceling the non-allowable claims.

3. ☒ Upon the filing of an appeal, the proposed amendment ☐ will be entered ☒ will not be entered and the status of the claims will be as follows:

Claims allowed: \_\_\_\_

Claims objected to: 5, 7-8, 12

Claims rejected: 1, 3, 6, 13

However;

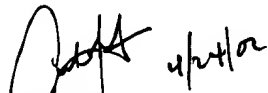
☐ Applicant's response has overcome the following rejection(s):


4. ☒ The affidavit, exhibit or request for reconsideration has been considered, but does not overcome the rejection because Applicants response to all of the rejection are on the basis of entry of the amendment. However, since the amendment has not been entered, the art rejections applied are maintained.

5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

  
Anish Gupta

  
CHRISTOPHER S. F. LOW  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1800